

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

UNITED STATES OF AMERICA,)	CR 12-26-M-DLC
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
JACK HENRY SWEARINGEN,)	
)	
Defendant.)	
_____)	

United States Magistrate Judge Jeremiah C. Lynch entered findings and recommendation on January 8, 2013, and recommended granting Defendant Jack Swearingen's motion to suppress. Judge Lynch shortened the standard time period to object to his findings and recommendation to January 11, 2013, pursuant to *United States v. Barney*, 568 F.2d 134, 136 (9th Cir. 1978), due to the then upcoming trial date. The Court granted the Government's motion to continue the trial on January 9, 2013, but did not extend the deadline for objections to the findings and recommendation. Neither party timely objected to the findings and

recommendation, and have thus waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the findings and recommendation for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

Judge Lynch conducted an evidentiary hearing in this case on November 20, 2012, and permitted the parties to file additional briefs post-hearing regarding a previous case against Defendant. Judge Lynch determined that Defendant’s probation officers had reasonable suspicion to search his residence and his computer on-site for evidence that he may have had unsupervised contact with a minor child in violation of his probation conditions. However, the officers were not permitted by law to seize Defendant’s computers and storage media devices for search off-site without a warrant. Judge Lynch correctly found that this warrantless off-site search violated Defendant’s Fourth Amendment rights, and his motion to suppress must be granted. After a review of Judge Lynch’s findings and recommendation, I find no clear error. Accordingly,

IT IS HEREBY ORDERED that Judge Lynch’s Findings and Recommendation (doc. 58) are adopted in full.

IT IS FURTHER ORDERED that Defendant's motion to suppress (doc. 15)
is GRANTED.

DATED this 16th day of January, 2013.



Dana L. Christensen, District Judge
United States District Court